



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-006460

FtT reference: EA/53592/2021

THE IMMIGRATION ACTS

**Heard at Field House
Remote Hearing
On 4 September 2023**

**Decision & Reasons
Promulgated**

14th September 2023

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

**SUQLAIN JAVED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Rasheed, Counsel instructed by CJ Legal Limited

For the Respondent: Mr Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 6 October 2022 of First-tier Tribunal Judge Handler which dismissed the appellant's appeal against the refusal of an application for a Family Permit as an extended family member (EFM) under the Immigration (European Economic Area) Regulations 2016.
2. The appellant is a national of Pakistan. He was born on 30 June 1999.
3. On 7 December 2020 the appellant applied for a Family Permit as the EFM of his uncle, Muhammad Arif Sadiq Bibi, a Spanish national. It is undisputed that Mr Bibi has been exercising Treaty rights in the UK.
4. The respondent refused the application on 1 April 2021. The core reasons for the refusal:

“• On your application you state you are financially dependent on your sponsor. As evidence of this you have provided money transfer remittance receipts from your sponsor to you, however, it is noted that these transfers are dated sporadically from 2018 to 2020. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period.

• I would also expect to see evidence which fully details yours and your family's circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met.”

5. The appellant appealed against the decision. At a hearing on 29 September 2022, the sponsor and his wife gave evidence. Their evidence was consistent with that of the appellant as to the sponsor caring for the appellant after the appellant's father (the sponsor's brother) died in 2000. After the sponsor married in 2010, his wife (MA) moved into the family home in Pakistan with the appellant. The sponsor sent funds for her and the appellant. The sponsor continued to send funds to the appellant after MA came to the UK in August 2021. The appellant maintained that he was dependent on the sponsor for all of his needs, not just his essential needs.
6. The First-tier Tribunal accepted in paragraph 27 of the decision that it was “plausible and credible” that the sponsor used the Ria money transfer system to send money to Pakistan. The judge recorded the sponsor's evidence on this:

“He explained that he uses the Ria money transfer app which mean that the money then moves directly from his bank account to the account of the recipient in Pakistan. I find that evidence to be plausible and credible. However, it is material that the sponsor's bank account statements from September 2020 to the end of 2020 have not been provided because this is undermining of the claims that money was being transferred from the sponsor's bank to either MA's bank account or to the appellant's bank account in Pakistan at that time. This is because it can reasonably be expected that the sponsor's bank statements would have been provided for

this important time period regarding dependency. No explanation has been provided as to why these bank statements have not been provided.”

7. In paragraph 28 the First-tier Tribunal set out:

“The respondent says that where the appellant says that historical receipts have been destroyed or lost there should be corresponding bank statements which would corroborate the payments. I accept the sponsor’s explanation that the transfers were made using services like Ria which require cash to be deposited with Ria. In those circumstances, bank statements would not show electronic transfers.”

8. It appeared to us that these comments on how the Ria system were contradictory. The statement in paragraph 28 that there would be no corresponding bank statements if the Ria system was used was confirmed as correct by the parties before us. The statement in paragraph 27 that material adverse weight attracted to the failure to provide bank statements to show payments sent via the Ria system in September to December 2020 was, in our judgment, in error, therefore.

9. We also noted that this issue formed part of the core reasoning provided for finding that the appellant was not dependent on the sponsor as of 31 December 2020. In paragraph 34 of the decision the First-tier Tribunal set out:

“34. Looking at matters in the round, in favour of the appellant there is the evidence of the appellant, the sponsor and MA. The money transfer documents and bank statements are supportive of a finding which I make that the sponsor has sent money on an irregular basis to MA since 2010 until she came to the UK. The evidence does not however support a finding that the appellant was dependent on the sponsor at 31 December 2020. This is in part because of the material lack of evidence of money transfers during 2020 from the sponsor to either MA or the appellant and the absence of the sponsor’s bank statements for 2020.”

10. It was our view that the First-tier Tribunal was not entitled to place adverse weight on the absence evidence of money transfers and an absence of bank statements in 2020. As above, the system used to send money was a cash system and would not have been reflected in the sponsor’s bank statements. Before us, the respondent did not contest that the First-tier Tribunal had evidence of money transfers made using the Ria system from September to December 2020, the total sum sent in four months coming to well over £1,000.

11. Further, the assessment of dependency is a holistic one. The conclusion in paragraph 34 shows the evidence concerning the Ria system and whether money transfers were sent in 2020 formed a material part of the reasoning which led to the conclusion that the appellant was not dependent on the sponsor. We therefore found that the contradictory position set out in paragraphs 27 and 28 and incorrect approach to the money transfers sent to the appellant were material errors as, had they not occurred, the

outcome of the holistic assessment of dependency as of 30 December 2020 could have been different.

12. The parties were in agreement that, having found an error of law on this basis, we should proceed to remake the appeal on the basis of the evidence that was before us. Mr Deller did not concede the appeal but indicated that he did not wish to argue strongly for the refusal decision in light of the nature of the error of law finding and the evidence that was before us.
13. It was our conclusion that the consistent evidence of the appellant, sponsor and MA as to the appellant's circumstances in Pakistan was credible. The First-tier Tribunal accepted that the sponsor had sent funds to MA when she was living with the appellant in Pakistan. The consistent evidence was that these funds were to support her and other members of the household which included the appellant. The Respondent's Review dated 28 July 2022 accepted that the money transfers from October 2020 to December 2020 had been made and they came to well over £1,000. The appellant's witness statement set out his financial needs and this was supported with evidence of utility bills, purchases of food, travel costs, receipts for student fees and other items such as computer equipment and medicines. The breakdown of the appellant's expenditure showed that he needed approximately £250 per month to cover his costs. It was our conclusion that the evidence provided showed that the appellant was dependent on the sponsor for his essential needs as of 31 December 2020, the specified date.
14. Where dependency was the only issue in dispute, for the reasons set out above, we found that the appellant had shown that he was an EFM as defined in Regulation 8 of the Immigration (European Economic Area) Regulations 2016 and we allowed the appeal.

Notice of Decision

The appeal is allowed under the Immigration (European Economic Area) Regulations 2016.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 4 September 2023